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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1949.

No. 210.

AUBURN SAVINGS BANK,
EASTPORT SAVINGS BANK,
SKOWHEGAN SAVINGS BANK,

*Petitioners,*

*vs.*

PORTLAND RAILROAD COMPANY,
CENTRAL MAINE POWER COMPANY,
PORTLAND COACH COMPANY,
CUMBERLAND COUNTY POWER & LIGHT COMPANY,
PUBLIC UTILITIES COMMISSION OF THE STATE OF MAINE,

*Respondents.*

## REPLY BRIEF OF PETITIONERS.

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## TABLE OF CONTENTS.


| | PAGE |
|---|---|
| I. The Record Supports the Grounds Urged in the Petition for Granting Certiorari | 1 |
| II. The Respondents Misapprehend the Nature of the Situation Calling for Review by This Court | 3 |
| Appendix | 6 |


### Table of Cases.


| | |
|---|---|
| *McCullough* v. *Kammerer Corporation*, 323 U. S. 327 | 2 |
| *May* v. *Midwest Refining Company*, 121 F. (2d) 431 (C. C. A. 1st, 1941) | 4 |
| *MacArthur* v. *Port of Havana Docks Co.*, 247 Fed. 984 (D. C. Me., 1917) | 4 |

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PUBLIC UTILITIES COMMISSION OF THE STATE OF MAINE,

Respondents.

## REPLY BRIEF OF PETITIONERS.

### I.

**The record supports the grounds urged in the petition for granting certiorari.**

Respondents assert (brief, p. 7) that certain of the important questions of Federal law set forth in the Petition as requiring the determination of this Court were not raised, litigated or passed upon below.

No effort is made by respondents to support this assertion and it is submitted that it is clearly in error. The

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manner in which the Federal questions were raised below is set forth in detail in the Petition at pages 9 to 12, inclusive. For the further convenience of the Court, there is attached hereto as an appendix the four rulings of Federal law of the sitting justice which were objected to by the respondents in their brief in the court below, in accordance with Maine practice.

Reference to the details of the raising of the issues below, set forth in the petition, and to the appendix, will disclose that the points referred to by the respondents were, in fact, raised as follows:

**As to Point C.** This was covered by petitioners' objection to the introduction in evidence of the report of the Commission and in the briefs of petitioners in the state courts (Petition, pp. 9 and 10) and by respondents' objections to "Third Questioned Ruling (Federal)" and, again, to "Fourth Questioned Ruling (Federal)" (See appendix hereto).

**As to Point D.** This was covered generally in the argument in the court below, but could not be dealt with specifically, inasmuch as the question arose out of and as a consequence of the decision of the court below.

**As to Points E, F and G.** Each of these is covered by petitioners' Assignment of Error No. 5 and Assignment of Error No. 43 (Petition, p. 12) and by respondents' objections to "Third Questioned Ruling (Federal)" and to "Fourth Questioned Ruling (Federal)".

In view of the foregoing, it is submitted that the case of *McCullough* v. *Kammerer Corporation*, 323 U. S. 327, relied upon by respondents, is inapplicable.

## II.

**The respondents misapprehend the nature of the situation calling for review by this Court.**

Respondents seemingly misapprehend the basis of petitioners' application, as well as the purport of the decision below.

For example, respondents emphasize (brief, pp. 4, 27) that petitioners were represented at the Commission hearings and failed to make objections other than as to the price of $110 being inadequate. This argument is beside the point, since as shown in the petition, the Commission recognized that there were various legal uncertainties involved and, presumably for that reason, included a provision expressly contemplating that a stockholder might "exercise his rights under the appraisal statute or by other means." In fact, petitioners were not represented at the hearing. The analyst of the Savings Banks Association of Maine appeared at the hearing, as set forth in the Petition (at p. 6), but was without authority to represent petitioners (R. 1010, 61, 73, 77).

Again, respondents urge, in effect, that the Commission could not have intended that the phrase "by other means" was to have particular significance (brief, p. 12 *et seq.*). This overlooks the fact that the phrase occurs in the Commission's report, which is required to be issued and sent to the security holders for their guidance under Section 11(g) of the Holding Company Act. It may not be presumed that the Commission, created among other things for the protection of investors, would mislead security holders as to their rights by an irresponsible statement in an official report.

Moreover, contrary to the contentions of respondents (brief, pp. 11-12), the Maine courts of equity are not restricted to an application of the appraisal statute. Broader powers are available, as shown, for example, by the very cases referred to by respondents, *May* v. *Midwest Refining Company*, 121 F. (2d) 431 (C. C. A. 1st, 1941); *MacArthur* v. *Port of Havana Docks Co.*, 247 Fed. 984 (D. C. Me., 1917). In the latter case, the court said (at p. 987):

> "The remedy provided for a dissenting minority stockholder by the Maine statute is not exclusive, so that a court in equity is restricted thereby in affording relief by the application of equitable principles, where there has been fraud or oppressive and unfair treatment of the minority in a sale or plan of reorganization proposed by the majority stockholders of a corporation."

Presumably the Commission knew this to be the law of Maine. Consequently, its reference to "other means" cannot be construed to have had no significance.

Respondents also urge that jurisdiction of the state courts necessarily conflicts with the provisions of the Holding Company Act and with the order of the Commission thereunder (brief, p. 9), despite the clear language of the Act and of the Commission's report. If the Commission were right, the jurisdiction of the state court could not conflict, since the Commission's report contemplated such proceedings.

On the other hand, if the Commission were wrong, in any respect whatever, it was the duty of the state court to say so, even though it meant finding the Act unconstitutional. Appropriate provision for review by this Court is available in such cases.

From the foregoing and other related arguments of respondents, it is apparent that the purport of their argument is that the state courts have jurisdiction to agree with the Commission but none to disagree; that when security holders rely upon the invitation of the Commission to ascertain their rights in a state tribunal, they do so at their peril since the state courts can do nothing except approve what the Commission does; and that state courts cannot even fill in the gaps that the Commission leaves to them. If these interpretations of the decision below are correct, it is submitted that they afford further reasons for granting the application of petitioners.

Certain other assertions contained in the brief of respondents are believed to be in error. We believe that these are sufficiently dealt with in the Petition.

Respectfully submitted,

Dated, August 31, 1949.

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[Appendix Follows]

## Appendix.

The following is quoted from the brief of the Power Company before the court below with reference to objections to rulings of the sitting justice:

"At this point, for the convenience of the Court, we insert the Rulings of Federal Law with which the Appellee Power Companies seriously disagree, and which they earnestly submit are erroneous.

RULINGS (FEDERAL LAW) WHICH APPELLEES BELIEVE ERRONEOUS

*First Questioned Ruling (Federal)*

'The controlling issues in this case are whether the acts of the majority stockholders of Portland Railroad Company, and particularly Central Maine Power Company in authorizing the disposition of practically all the assets of the Railroad Company, its liquidation and its dissolution, as also the acts of those who executed that authority, were illegal, and if not, were so unfair or oppressive to the minority stockholders that equitable relief should be granted. These issues will now be considered' (R. p. 501-A).

*Second Questioned Ruling (Federal)*

'Finding no illegality in the Special Meeting of the Portland Railroad Company of December 28, 1944, now is reached the all-important question as to whether the action of the majority stockholders in their voting to dispose of the assets of the corporation and the disposition thereof made pursuant to such votes was unfair and oppressive to the minority stockholders and Equity should intervene' (R. p. 515-A).

*Third Questioned Ruling (Federal)*

'The ORDER, the REPORT and the FINDINGS and OPINION of the Securities and Exchange Commission must be read together and, so read, must be construed as authorizing Central Maine to submit the Offer which it had prepared together with the Plan and Portland Railroad Company, that is its stockholders, at their election to accept the same, but reserving to each and all of the stockholders of the Railroad Company the right to refuse to accept said Offer and Plan and as to his stock "exercise his rights under the appraisal statute (Maine) or by other means (to) be determined by his independent judgment".' (R. p. 478-A).

*Fourth Questioned Ruling (Federal)*

'As I construe the law, this was a directive to Central Maine to present the Plan, with Offer included, which had been approved, to Portland Railroad Company and its stockholders and obedience by Central Maine was mandatory. Not so as to the Railroad Company or its stockholders. With them acceptance of the Offer and Plan was clearly optional and rights of all dissenting stockholders were preserved.' "

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CENTRAL MAINE POWER COMPANY,
PORTLAND COACH COMPANY,
CUMBERLAND COUNTY POWER & LIGHT COMPANY,
PUBLIC UTILITIES COMMISSION OF THE STATE OF MAINE,

*Respondents.*

## PETITION FOR RECONSIDERATION OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE.

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# INDEX.


| | PAGE |
|---|---|
| PETITION | 1 |
| CERTIFICATE OF COUNSEL | 8 |


CITATIONS CITED.


| | |
|---|---|
| *Farmers Loan and Trust Company* v. *New York and Northern Railway Company*, 150 N. Y. 410 (1896).. | 2 |
| *Schwabacher* v. *United States*, 334 U. S. 182 (1948).... | 6 |
| *Southern Pacific Co.* v. *Bogert*, 250 U. S. 483 (1919).. | 2 |

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PUBLIC UTILITIES COMMISSION OF THE STATE OF MAINE,

Respondents.

## PETITION FOR RECONSIDERATION OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE.

*To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Come now your petitioners, Auburn Savings Bank, Eastport Savings Bank, and Skowhegan Savings Bank, and respectfully pray that this Court reconsider its order of October 10, 1949, denying their petition for a writ of certiorari to the Supreme Judicial Court of Maine.

The facts are as stated in the original petition; no intervening change in the facts has occurred. Petitioners desire,

however, to urge additional grounds for granting the writ, which were not contained in the original petition.

The essence of the situation before the Securities and Exchange Commission was that it was approving a proposal of the Power Company to be submitted as an offer to the Railroad Company. The offer presupposed acceptance by the Railroad Company before it could become a plan. It was submitted to the stockholders of the Railroad Company where 49% of the stock was owned by the Power Company, which had a vital interest adverse to the other stockholders. The acceptance came from this stockholders' meeting, at which the Power Company having such a vital adverse interest exercised its controlling vote in breach of the fiduciary relationship existing toward minority interests. *Southern Pacific Co.* v. *Bogert*, 250 U. S. 483 (1919); *Farmers Loan and Trust Company* v. *New York and Northern Railway Company*, 150 N. Y. 410 (1896). The trial court, whose findings of fact must be accepted on appeal, found that such a breach of fiduciary relationship had occurred (R. 515-A).

Because of the complete domination of the Railroad Company by the Power Company, the Commission recognized that special protection for the rights of what were in effect the minority stockholders of the Railroad Company was required. Consequently it provided that

> "• • • whether or not any security holder should vote in favor of the plan or choose to exercise his rights under the appraisal statute or by other means should be determined by his independent judgment."

Had it not been for the provision of the Commission's report quoted above, the very act of the Commission in approving the offer would have raised questions that would have necessitated review by the Court of Appeals.

However, such a review was not required for the protection of stockholders under the terms of the Commission's report, inasmuch as the essence of the Commission's action contemplated that in recognition of the unusual factors present, the minority stockholders should have the protection of resort to the state courts, if they saw fit, for adjudication of their rights.

Relying thereon, petitioners promptly instituted action in the courts of Maine in order to seek the protection to which, as minority stockholders, they were entitled and which the plan specifically provided.

In the meantime, certain other minority stockholders, plaintiffs below but not here petitioners, had instituted review in the Court of Appeals. However, before proceeding with the action in the state court by these petitioners and such other plaintiffs, Chief Justice Sturgis, the sitting justice, required that that appeal be withdrawn. At the outset of the hearing counsel for the respondents raised the question as to whether the appeal had been withdrawn (R. 2) and the following colloquy occurred between the sitting justice, Mr. Pierce, counsel for respondents, and Mr. Chesley, counsel for plaintiffs, including petitioners (R. 2-4):

> "Mr. Pierce: Your Honor, I have understood that the appeal taken from the order of the SEC was to have been dismissed before this proceeding started. I called the clerk this morning, to see that there was no miscarriage, and she says the appeal has not been dismissed.
>
> "The Court: What do you say to that, Brother Chesley?
>
> "Mr. Chesley: It has not been actually of record, if your Honor please. The Clerk has been informed that the appeal is dismissed and the proper motion will be filed later.

"The Court: You told me it was going to be filed somewhere around the 31st of May.

"Mr. Chesley: I did, your Honor, and I notified the Clerk that the appeal was dismissed so far as the parties plaintiff were concerned and asked him what the proper procedure was, and he said the proper procedure would be in due course for either party, either the SEC or the plaintiffs, to file a motion to that effect. The court is not in session now.

"The Court: When will it be in session again?

"Mr. Chesley: I think in October. If your Honor wants me to, I can prepare a motion and send it up to them, but I didn't think it was necessary inasmuch as I have written to the Clerk.

"The Court: It is rather necessary to keep your agreement, and the condition of this assignment was that that should be dismissed.

"Mr. Chesley: I will state, if your Honor please, so far as we are concerned, we have advised the Clerk that it was dismissed. The formal entry has not been made in the form of a motion.

"The Court: I think you should file something in writing, at least in this cause, waiving any right to continue your appeal, and make it formal. This Court is not going to proceed, as I advised you in chambers some time ago, with a possibility that after we have progressed to a certain stage some action will be taken in the court of appeals which will nullify all that we have done or make it a waste of effort and time.

"Mr. Chesley: In compliance with your Honor's suggestion, it may be stated for the record that the case of Maurice A. Bowers and Theron A. Woodsum, a petition for review brought in the Circuit Court of Appeals for the First Circuit in connection with the order of the SEC, under date as of December 19, 1944, is dismissed and no further proceedings will be taken thereon."

Petitioners then proceeded with the state court action in accordance with the Commission's report and in accordance with an essential term of the plan. However, respondents then claimed that the Maine courts lacked jurisdiction. This contention was denied by the sitting justice but upheld by the Supreme Judicial Court of Maine.

As a result of this decision which is claimed to be erroneous, petitioners are left without any means whatever of protecting their rights as minority stockholders, contrary to explicit provision of the Commission's report which recognized the necessity for such special protection.

Moreover, the Commission did not purport to bind any dissenting stockholder by virtue of action taken pursuant to Section 11(e) of the Holding Company Act, which provides:

> "If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18 of this chapter, to enforce and carry out the terms and provisions of such plan."

No application for enforcement as provided therein was contemplated or taken. On the contrary, as the sitting justice concluded (R. 505 A):

> "As I construe the law, this was a directive to Central Maine to present the Plan, with Offer included, which had been approved, to Portland Railroad Company and its stockholders and obedience by Central Maine was mandatory. Not so as to the Railroad Company or its stockholders. With them acceptance of the Offer and Plan was clearly optional

> and rights of all dissenting stockholders were preserved. • • •
>
> "If the Securities and Exchange Commission had the power to fix and determine the rights or remedies of stockholders of the Railroad Company who rejected the Plan which, to say the least, is doubtful, the Commission here expressly reserved to such stockholders their full and unfettered rights without limitation or restriction and did not attempt to exercise such a power."

Consequently, if the report of the Commission in fact constituted a plan, the action of the Supreme Judicial Court resulted in eliminating one of its integral parts. For, as already shown, the right to resort to state courts was necessary to the protection of minority rights. By its decision, the Supreme Judicial Court has eliminated this essential aspect of the plan and if this action is permitted to stand, the Commission's plan has indeed failed, since it is no longer the plan promulgated by it.

Unless remedied by this Court, as was done in *Schwabacher* v. *United States*, 334 U. S. 182 (1948), the inevitable result would be that legislation designed to protect investors is in fact used by a public utility to advance its own interests at the expense of investors.

WHEREFORE, your petitioners pray that the Court reconsider their petition that a writ of certiorari may issue out of and under the seal of this Court, directed to the Supreme Judicial Court of the State of Maine, commanding that court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and of all proceedings in said court in this case to the end that this cause may be reviewed and determined by this Court and that the order of said Supreme Judicial

Court of Maine be reversed and that your petitioners be granted such other and further relief as may appear proper.

Dated: October 24, 1949.

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## Certificate of Counsel.

I hereby certify that the foregoing petition is presented in good faith and not for delay, and that it is restricted to substantial grounds not previously presented to this court.

WILLARD P. SCOTT.

# OPPOSITION

# BRIEF

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PUBLIC UTILITIES COMMISSION OF THE STATE OF MAINE,
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# BRIEF FOR PORTLAND RAILROAD COMPANY, CENTRAL MAINE POWER COMPANY AND CUMBERLAND COUNTY POWER & LIGHT COMPANY, RESPONDENTS, IN OPPOSITION TO PETITION FOR RECONSIDERATION OF PETITION FOR A WRIT OF CERTIORARI.

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## TABLE OF CASES


| | PAGE |
|---|---|
| *McCullough* v. *Kammerer Corporation*, 323 U. S. 327..... | 5 |
| *Schriber-Schroth Co.* v. *Cleveland Trust Co.*, 305 U. S. 47.. | 4 |
| *Securities and Exchange Comm.* v. *Central Illinois Securities Corp. et al.*, decided June 27, 1949, 93 L. Ed. (adv. op.) 1291 ..... | 7 |

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*Respondents*

## BRIEF FOR PORTLAND RAILROAD COMPANY, CENTRAL MAINE POWER COMPANY AND CUMBERLAND COUNTY POWER & LIGHT COMPANY, RESPONDENTS, IN OPPOSITION TO PETITION FOR RECONSIDERATION OF PETITION FOR A WRIT OF CERTIORARI.

If we correctly interpret the reason for reconsideration advanced by Petitioners, it is that the Petitioners were misled because the Respondents first insisted that a petition to the Circuit Court of Appeals for review under 24(a) of the Holding Company Act, which Petitioners' counsel had brought for two stockholders who were also intervenors in the State Court, be dismissed before beginning hearings on the bill in equity and, only after that petition for review had been dismissed, did Respondents for the first time claim that the State Court lacked jurisdiction to grant the relief sought by such bill in equity.

In answer, Respondents submit:

**The real issue in this litigation is not whether the Sitting Justice or the Maine Supreme Court acted irregularly or oppressively or whether the Petitioners misconceived their rights or remedies but whether the Maine Court had jurisdiction to grant the relief sought; whether the Maine Supreme Court was correct in ruling that:**

> "It could enter no decree which would be inconsistent with such action as was taken or might be taken by the Commission in the exercise of the exclusive jurisdiction given to it by the Holding Company Act." (R. 2277)

Contentions as to the details of procedure in the State Court proceeding are of no importance. Neither this Court nor the Maine Supreme Court can remand this bill in equity to the Commission. Nor is the right of appraisal provided by the Plan here in issue. The Petitioners declined to utilize it and the Maine Supreme Court declined to pass upon its validity. (R. 2276)

*The Maine Court, having no jurisdiction to set aside action pursuant in all respects to an 11(e) Plan approved by the Commission as necessary to effectuate the provisions of subsection (b) and fair and equitable to all persons affected thereby, properly dismissed Petitioners' bill in equity. This Court properly denied their petition for certiorari and the pending petition for reconsideration should be likewise denied.*

In no way abandoning our fundamental contention that the Maine Court lacks jurisdiction, Respondents further submit:

**Petitioners' counsel was not coerced by the Sitting Justice into dismissing the petition for review under 24(a) which he had filed for the intervenors with the Circuit Court of Appeals.**

The colloquy quoted in the petition for reconsideration occurred at the opening of the hearing before the Sitting Justice on June 25, 1945. It is clear from the statements of the Sitting Justice in the Record (quoted in the pending petition) that there had been a previous discussion in Chambers as to an assignment for hearing and that he had declined to make such assignment while there remained—

> "a possibility that after we have progressed to a certain stage some action will be taken in the Court of Appeals which will nullify all that we have done or make it a waste of effort and time."

Dismissal of the petition for review was not a condition to keeping the bill in equity alive on the docket of the Maine Court but, as the Sitting Justice stated, merely "the condition of this assignment" for hearing. He was not forcing counsel for the Petitioners into the dilemma of dismissing either the 24(a) petition or the bill in equity but merely stating that he would not start on a long hearing which, at any time during its progress or even after his decision, might become "a waste of effort and time" because of a decision of the Circuit Court of Appeals.

Petitioners' counsel made no objection and no reasonable objection was open. If he wished to prosecute the petition for review, the bill in equity would merely remain on the State Court docket until a decision by the Circuit Court of Appeals, whereupon the State Court proceeding could be set down for hearing; the legal situation being presumably clarified by the decision of the Circuit Court of Appeals.

The action of the Sitting Justice was merely the normal discretionary control of the calendar of his own Court and conservation of his own time. By no possibility could it present a federal question, important or otherwise, and constitute either a reason for certiorari required by Rule 38, par. 5(a) or "other substantial grounds" available to Petitioners required for reconsideration by Rule 33, par. 2. Certainly the facts of the case at bar bear not the slightest resemblance to those in *Schriber-Schroth Co.* v. *Cleveland Trust Co.*, 305 U. S. 47, cited in Rule 33 as a typical instance of "substantial grounds".

Parenthetically, we might suggest that the concurrent pendency of a petition for review in the Circuit Court of Appeals and a bill in equity in the Maine Court, plus the obvious chance of differing factual decisions by the two Courts, affords a typical illustration of the absurd results which would follow a system of dual jurisdiction. If on petition for review, the Circuit Court of Appeals confirmed the Order of the Commission approving the Plan, it is unthinkable that a State Court could set aside transactions consummated in strict accordance with its terms; nevertheless a Plan approved by the Commission, review of which is not sought, is exactly as binding upon utilities subject to the Commission as the identical Plan if, on review, it is found proper by a Court of Appeals.

**Before Petitioners' counsel caused the 24(a) petition for review to be dismissed, he was fully informed of the Respondents' contention that the State Court lacked jurisdiction of the issues raised by the bill in equity.**

On the date of the colloquy in question, June 25, 1945, no motion to dismiss the 24(a) proceeding had been filed. On that same day and immediately after the opening statement by Petitioners' attorney, the attorney for Respond-

ents, Central Maine Power Company and Cumberland County Power & Light Company, made his opening statement (R. Vol. III, p. 66); inserted in Record by the Printer at close of testimony presented by the Petitioners (R. Vol. V, pp. 1049-1 to 1049-13). That statement made clear his contention:—that the Commission's order was binding on all stockholders of the Railroad Company and not subject to attack in the State Court equity proceedings which should therefore be dismissed for lack of jurisdiction. (See R. Vol. V, pp. 1049-8 to 1049-13).

On June 26, the day following Respondents opening statement which thus definitely apprised both the Court and counsel for the Petitioners of Respondents' contention, counsel for the Petitioners mailed to the Circuit Court of Appeals a motion that the petition for review under 24(a) be dismissed and on the following day, June 27, notified the Court that that had been done. (See R. Vol. III, p. 169.) It is thus clearly apparent that the dismissal of the petition for review under 24(a) was due neither to coercion by the Sitting Justice nor to lack of knowledge by Petitioners' counsel of the Respondents' contention that the State Court lacked jurisdiction; but to the voluntary choice by Petitioners' counsel not to prosecute the petition for review in the Circuit Court of Appeals exactly as the Petitioners had chosen not to pursue their appraisal rights under the Maine statute.

**This contention, of being either coerced or misled, was not made by Petitioners in the Court below and therefore is not available to them as a reason for certiorari or for reconsideration.**

See *McCullough* v. *Kammerer Corporation,* 323 U. S. 327, discussed at pp. 7-8 of Respondents' Brief in opposition to the petition for certiorari.

**The intervening plaintiffs, who had brought the petition for review under 24(a) and who, it is alleged, were induced to dismiss it, are not parties to the petition for certiorari, nor to the petition for reconsideration.**

The present Petitioners did not petition for a review of the Commission's order by the Circuit Court of Appeals and the statutory period for filing such petition had expired long before the colloquy quoted; *the Petitioners, therefore, were not deprived of the right to seek such review by any action of the Respondents or of the Sitting Justice.*

**Finding by Sitting Justice as to breach of fiduciary relationship is based solely on his factual conclusion as to value. Such issue is within exclusive jurisdiction of the Securities and Exchange Commission.**

Petitioners state that the Sitting Justice made a Finding that the Respondents committed a breach of fiduciary relationship. That Finding, however, makes perfectly clear that its sole basis was the factual conclusion of the Sitting Justice that the fair value of the stock of the Railroad Company was $119.25 per share rather than the $110 which the Commission found "fair and equitable". (R. p. 587-A) It repeatedly states that there was no fraud, concealment, lack of proper notice of the stockholders' meeting, etc. (R. p. 501-A)

The Maine Supreme Court approved his findings as to legality of the meeting etc. and said: (R. p. 2266)

"The charges of fraud are without substance."

* * * * *

"And these same banks which are now plaintiffs were represented at that hearing (before the Commission) by Theron A. Woodsum, a statistician and security analyst employed by the Savings Bank Association of Maine. He said not one word about fraud. Not only have the plaintiffs failed to offer any direct evidence

> of the fraud which they have charged, but their silence when they should have spoken casts grave doubt on whether they ever had such evidence. To be sure, the briefs of counsel are filled as is the bill of complaint with charges of fraud. These are iterated and reiterated. But the vehemence with which an allegation is asserted is not a substitute for proof of it."

In disagreeing with the Commission as to what constituted "fair and equitable" treatment of the stockholders of the Railroad Company, the Sitting Justice first ruled as a matter of law that the Maine Court had jurisdiction to make the final decision as to a matter clearly within that "area of expert discretion" which this Court has held the *Holding Company Act expressly entrusted to the Commission.* (*Securities and Exchange Commission* v. *Central Illinois Securities Corporation, et al.*, decided June 27, 1949, 93 L. Ed. (adv. op.) 1291).

Thus, the basic issue of jurisdiction again appears. If the Maine Court and not the Commission had jurisdiction, the Maine Court might have jurisdiction to find that the proposed payment of $110 instead of $119.25 per share constituted a breach of fiduciary obligation. Since however it is the Commission and not the Maine Court which has exclusive jurisdiction to determine what was "fair and equitable" to the minority stockholders, any ruling of the Sitting Justice as to fiduciary obligation, based entirely on his finding that what the Commission found "fair and equitable" was in fact unfair, is likewise beyond his jurisdiction. The decision of the Maine Court of last resort so holding is therefore correct and the Petition for Reconsideration should be denied.

WHEREFORE, the undersigned Respondents pray this Honorable Court that the Petition for Reconsideration of Petition for Writ of Certiorari be denied.

Respectfully submitted,

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